

1 Mark S. Askanas (SBN 122745)
2 Dylan B. Carp (SBN 196846)
3 Steven Koyanagi (SBN 269094)
JACKSON LEWIS LLP
3 199 Fremont Street, 10th Floor
4 San Francisco, California 94105
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
5 Email: askanasm@jacksonlewis.com
carpd@jacksonlewis.com
steven.koyanagi@jacksonlewis.com

7 Attorneys for Defendant
8 OMNEX GROUP, INC. d/b/a GIROMEX, INC.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARIBEL CEDENO, *et al.*,
Plaintiffs,
v.
OMNEX GROUP, INC. d/b/a GIROMEX, INC.,
Defendant.

Case No. CV11-5521 EDL

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AS MODIFIED**

Date: April 3, 2012
Time: 10 a.m.

Complaint filed: November 15, 2011

FACTUAL BACKGROUND

On April 3, 2012, this Court conducted a hearing on Defendant Omnex Group, Inc. d/b/a Giromex, Inc.'s ("Defendant") Motion for Preliminary Approval of Class Action Settlement ("Motion"). This Court has received and fully reviewed the Motion and Memorandum of Points and Authorities in support thereof, the Stipulation of Settlement and Release ("Settlement") as amended by the Stipulation of Cy Pres Designee, the proposed Class Notice, including the Claims Form and Exclusion Form, the Proposed Order Granting Defendant's Motion for Preliminary Approval of Class Action Settlement, and the declarations of Maribel Cedeno and Charles Kelly.

1 In recognition of the Court's duty to make a preliminary determination as to the reasonableness of
 2 any proposed class-action settlement, and to conduct a fairness hearing as to the good faith,
 3 fairness, adequacy and reasonableness of any proposed settlement, this Court HEREBY ORDERS
 4 and MAKES DETERMINATIONS as follows:

5 **I. CONDITIONAL CERTIFICATION OF A SETTLEMENT CLASS AND
 6 APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

7 1. The Court finds that certification of the following class ("Class" or "Settlement
 8 Class"), for settlement purposes only, is appropriate: All persons employed by Giromex as
 9 Branch Tellers within the State of California at any time between November 15, 2007 and the
 10 date of preliminary approval.

11 2. Where, as here, the parties reach a settlement agreement prior to class certification,
 12 a district court must first assess whether a class exists. *Staton v. Boeing Co.*, 327 F.3d 938, 952
 13 (9th Cir. 2003). Under the law regarding class settlement, the Parties can stipulate that the defined
 14 class be conditionally certified for settlement purposes only. See *Amchem Products, Inc. v.*
 15 *Windsor*, 521 U.S. 591, 620 (1997). If the Settlement does not become final for any reason, the
 16 fact that the Parties were willing to stipulate to class certification as part of the Settlement shall
 17 have no bearing on, and will not be admissible in connection with, the issue of whether a class in
 18 this action should be certified in a non-settlement context. The Court's findings are for purposes
 19 of certifying the Settlement Class for settlement purposes only and will not have any claim or
 20 issue or evidentiary preclusion or estoppel effect in any other action or in this action if the
 21 Settlement is not finally approved or final judgment is not entered.

22 3. With respect to the Settlement Class, the Court finds, for settlement purposes only,
 23 that the proposed class meets the requirements of numerosity, commonality and typicality to
 24 justify certification and that resolution of this matter through a class action is superior to other
 25 available methods.

26 4. The Court finds, for settlement purposes only, and with no other effect on this
 27 action, including if the Settlement is not ultimately approved or final judgment is not entered,
 28 Plaintiff Maribel Cedeno adequately represents the Class and appoints her as Class

1 Representative in this case.

2 5. The Court also finds, for settlement purposes only, that Plaintiff's counsel, Hersh
3 & Hersh, A Professional Corporation, adequately represents the Class and is hereby appointed as
4 Class Counsel.

5 6. The Court further finds, for settlement purposes only, that Plaintiff's collective
6 action under the Fair Labor Standards Act is appropriate for conditional certification because
7 Plaintiff has demonstrated that the putative collective action members are similarly situated.

8 **II. PRELIMINARY APPROVAL OF THE SETTLEMENT**

9 7. Under Rule 23(e), the Court must determine whether a proposed class action
10 settlement is "fundamentally fair, adequate, and reasonable." See Fed. R. Civ. Pro. 23(e)(2);
11 Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).

12 8. The Court has reviewed the Settlement and the proposed Class Notice, Claim
13 Form, and Exclusion Form. The Court finds on a preliminary basis that the Settlement and the
14 proposed Class Notice appear to be within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court. It appears to the Court on a preliminary
16 basis that the settlement amount is fair and reasonable to all potential Class Members when
17 balanced against the probable outcome of further litigation relating to liability and damages
18 issues. Plaintiff has asserted violations of the Fair Labor Standards Act, the California Labor
19 Code and other state laws. Defendant denies any liability or wrongdoing of any kind whatsoever
20 alleged in Plaintiff's Complaint. Defendant further maintains that whether a class could
21 ultimately be certified is disputed, and agrees to a class settlement in the interest of compromising
22 and resolving this action. The Parties recognize the risks involved in prosecuting and defending
23 this action, including significant delay, defenses asserted by Defendant, and potential appellate
24 issues. It further appears that settlement at this time will avoid additional substantial costs which
25 have already been incurred by both Parties, as well as avoid the delay and risks that would be
26 presented by further prosecution of the litigation. It further appears that the proposed settlement
27 has been reached as the result of serious and non-collusive arm's-length negotiations. It further

1 appears that extensive and costly investigation and research has been conducted such that counsel
 2 for the Parties at this time are able to reasonably evaluate their respective positions.
 3

4 9. In connection with its preliminary approval of the Settlement, the Court appoints
 5 CPT Group, Inc. to act as the Claims Administrator who will administer the settlement according
 6 to the terms of the Settlement, as approved by this Court.
 7

III. APPROVAL OF DISTRIBUTION OF THE NOTICE OF SETTLEMENT

8 10. Rule 23(e) provides that a court “must direct notice in a reasonable manner to all
 9 class members who would be bound by” a proposed class action settlement. Fed. R. Civ. Pro.
 10 23(e)(1). This Court finds the proposed Class Notice, Claim Form (including Claims Form and
 11 Exclusion Form), which are attached hereto as Exhibit B, C, and D, fairly and adequately advise
 12 the potential class members of the terms of the proposed Settlement and the claims process for the
 13 class members to obtain the benefits available thereunder, as well as the right of class members to
 14 opt out of the class, to challenge the number of “Qualifying Years” reported by Defendant from
 15 their records, to file documentation in objection to the proposed settlement, and to appear at the
 16 Final Approval Hearing to be conducted at the date set forth below. Such notice will be sent by
 17 first-class mail through the United States Postal Service, postage pre-paid, to each identified class
 18 member at his or her last known address. In the case of any returned mail, the Claims
 19 Administrator will perform a standard skip trace to ascertain the current address of the particular
 20 class member in question and re-send the notice within five (5) business days of receiving such
 21 information. The Court finds that this proposed notice to class members is reasonable and
 22 comports with all constitutional requirements, including those of due process.
 23

24 11. The proposed Claim Form allows class members a full and fair opportunity to
 25 submit a claim for proceeds under the Settlement. The Claim Form fairly, accurately, and
 26 reasonably informs class members of the consequences of a failure to complete and submit a
 27 Claim Form, including the release of the class members’ claims.
 28

29 12. Accordingly, good cause appearing, the Court hereby approves the proposed Class
 30 Notice, Claims Form and Exclusion Form, and orders the Class Administrator to

1 distribute the said Class Notice, Claims Form, and Exclusion Form in the manner and pursuant to
 2 the procedures described in the Settlement.

3 **IV. FINAL APPROVAL HEARING AND SCHEDULE**

4 13. The Court hereby grants the Parties' motion to set a Final Approval Hearing and
 5 orders the following schedule of dates for further proceedings:

6 a. Within fifteen (15) business days of preliminary approval of the settlement,
 7 Defendant shall provide to the Claims Administrator the number of Qualifying Years for purposes
 8 of calculating the Settlement Awards.

9 b. Within fifteen (15) business days after preliminary approval of the
 10 Settlement, Defendant shall provide the Claims Administrator the names, dates worked, and, if
 11 available, last known contact information, for the Class, including social security numbers or
 12 other identifying information in Defendant's custody, possession, or control.

13 c. Mailing of the Class Notice and Claim Form to the Settlement Class shall
 14 be completed within forty-five (45) days from the receipt of the Qualifying Years and Class List.

15 d. The deadline to Postmark Valid Claim Forms, Disputes, Requests for
 16 Exclusion and/or Objections shall be forty-five (45) days from the mailing of the Class Notice
 17 and Claim Form.

18 e. The Motion for Final Approval of the Settlement Agreement shall be filed
 19 by September 4, 2012.

20 f. The Final Approval Hearing will be heard on October 9, 2012, at 450
 21 Golden Gate Avenue, San Francisco, CA 94102, in the Courtroom of the Honorable Elizabeth D.
 22 Laporte.

23 14. Class Members who object to the proposed Settlement must appear and present
 24 such objections or disputes at the Final Approval Hearing in person or by counsel, provided that
 25 the objecting class member files a written objection and a notice of intention to appear at the Final
 26 Approval Hearing, and sends copies to the Parties' counsel as set forth in the Class Notice no
 27 later than the deadline set forth therein, and appears at the Final Approval Hearing. No person
 28

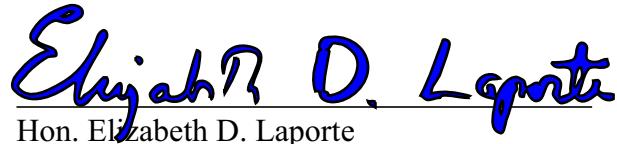
1 shall be heard, and no briefs or papers shall be received or considered, unless the foregoing
2 documents have been filed and served as provided in this Order, except as this Court may permit
3 for good cause shown.

4 **IT IS FURTHER ORDERED** that, to the extent permitted by law, pending final
5 determination as to whether the Settlement should be approved, the Class Representative and all
6 class members who do not opt out of the Settlement, whether directly, representatively, or in any
7 other capacity, whether or not such persons have appeared in this action, shall not institute or
8 prosecute any claims or actions against Defendant which fall within the definition of the Released
9 Claims in the Settlement, and any pending actions against Defendant, whether in court, arbitration
10 or pending before any state or federal governmental administrative agency, are stayed on an
11 interim basis as to any claims that fall within the definition of the Released Claims, and all such
12 pending actions will be subject to the final judgment in this action, absent submission of a valid
13 and timely opt-out request, in which case the individual opting out may pursue his or her
14 individual claims, but not class or representative claims, that fall within the definition of the
15 Released Claims.

16 **IT IS FURTHER ORDERED** that, if for any reason the Court does not grant final
17 approval of the Settlement, or the Settlement otherwise does not become effective in accordance
18 with the material terms of the Settlement, this Order shall be rendered null and void and shall be
19 vacated, the Parties shall revert to their respective positions before entering into the Settlement,
20 and all evidence and proceedings held in connection with the Settlement shall be without
21 prejudice to the status quo ante rights of the Parties to the action as more specifically set forth in
22 the Settlement.

23 **IT IS SO ORDERED.**

25 DATED: April 6, 2012


26 Hon. Elizabeth D. Laporte

27 4811-3312-7694, v. 1